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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
08/863,103	05/23/97	BRYANT	C E025-1030

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EXAMINER

KOCZO JR, M

ART UNIT

PAPER NUMBER

3748

9

DATE MAILED:

09/08/99

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on 8-16-99 and 8-20-99

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire ONE month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 25-38 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☐ Claim(s) \_\_\_\_\_ is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☒ Claims 25-38 are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of Reference Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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Applicant's cancellation of the original claims and submission of new claims necessitates the new restriction requirement as follows:

Restriction to one of the following inventions is required under 35 U.S.C. 121:

*Selected I  
Subcharging*

- Claim 36, drawn to an internal combustion engine having a first inlet port for low pressure air and a second inlet port for high pressure air, and wherein the compression ratio is lower than the expansion ratio, classified in class 123, subclass 559.1.
- II. Claims 32 and 33, drawn to an internal combustion engine having a first inlet port for low pressure air and a second inlet port for high pressure air, and including a one-way valve between the cylinder and the intake valve, classified in class 123, subclass 559.1.
- III. Claim 37, drawn to a supercharged internal combustion engine having means for controlling the compressor so that it operates in either a compressed mode or a pass mode, classified in class 123, subclass 564.

The inventions are distinct, each from the other because of the following reasons:

Inventions I, II and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I can be operated without a one-way valve or compressor control. Likewise, each of the other inventions does not require the features of each of the remaining inventions for their operation. See MPEP § 806.05(d).

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The group I invention furthermore requires a search in Class 123, subclass 316, and the group II invention requires a search in Class 123, subclass 188.1

Because these inventions are distinct for the reasons given above and the searches are not co-extensive, restriction for examination purposes as indicated is proper.

Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed.

Claims 25 to 31, 34, 35 and 38 will be examined if either of groups I or II is elected.

This application contains claims directed to the following patentably distinct species of the claimed invention: species A wherein the compressor is a reciprocating compressor, and species B wherein the compressor is a rotary compressor.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 25 to 27 and 31 to 38 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations

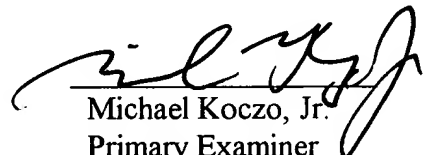
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of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Any inquiry relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is 703-308-0861.

Any inquiry relating to patent applications in general should be directed to the Patent Assistance Center at 1-800-786-9199.

  
Michael Koczo, Jr.  
Primary Examiner  
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September 3, 1999  
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